

DAM AND RESERVOIR SAFETY COUNCIL MEETING
DEPARTMENT OF NATURAL RESOURCES
GEOLOGICAL SURVEY AND RESOURCE ASSESSMENT DIVISION
CONFERENCE ROOM
ROLLA, MISSOURI

December 17, 2003

Mary Hagerty, Chairman of the Dam and Reservoir Safety Council, called the meeting to order at 10:00 a.m. in the conference room at the Geological Survey and Resource Assessment Division in Rolla, Missouri.

Council members present were Dean E. Freeman, Zoretta Schoonover, John Boyer, Jeff Cawlfeld, Richard Frueh and Barbara Adelman. Members of the Water Resources Program (WRP) present were James L. Alexander, Tammy Theilen, Robert Clay, and Matthew Dunn. Representing the Attorney General's Office was Shannon Haney, Assistant Attorney General.

OPEN SESSION ADJOURNED INTO CLOSED SESSION

Barbara Adelman moved that the Dam and Reservoir Safety Council meet in closed session at this time, on December 17, 2003, at the Department of Natural Resources, Geological Survey and Resource Assessment Division Conference Room, in Rolla, Missouri for the purpose of discussing personnel actions, legal actions, causes of actions, or litigation, confidential and privileged matters with the Board's attorney, testing and examinations, personnel records or applications, or records which are otherwise protected from disclosure by law as provided for in Section 610.021, RSMo.

Zoretta Schoonover seconded the motion.

Mary Hagerty, Chairman, noted that it had been moved and seconded that the Dam and Reservoir Safety Council meet in Closed Session at this time, on December 17, 2003, at the Department of Natural Resources, Geological Survey and Resource Assessment Division Conference Room, in Rolla, Missouri for the purpose of discussing personnel actions, legal actions, causes of actions, or litigation, confidential and privileged matters with the Board's attorney, testing and examinations, personnel records or applications, or records which are otherwise protected from disclosure by law as provided for in Section 610.021, RSMo. She then asked for a roll call vote.

Barbara Adelman, yes; Dean Freeman, yes; Zoretta Schoonover, yes; Jeff Cawlfeld, yes; John Boyer, yes; and Richard Frueh, yes.

Mary Hagerty stated that the motion had been voted on unanimously to meet in closed session today, December 17, 2003.

Jeff Cawlfeld made a motion to adjourn from closed session and return to open session. John Boyer seconded the motion.

Mary Hagerty noted that it had been moved and seconded to adjourn from closed session and return to open session. She then asked for a roll call vote.

Barbara Adelman, yes; Dean Freeman, yes; Zoretta Schoonover, yes; Jeff Cawlfeld, yes; John Boyer, yes; and Richard Frueh, yes.

INTRODUCTION OF GUESTS

Guests present were Mimi Garstang, Director of the Geological Survey and Resource Assessment Division; Clarence Schoonover; Hettie Hall, dam owner; Betty Freeman; Mitch & Laura Sobba, dam owners; Russ Adams, P.E.; Mike Perry, dam owner; Mike Wells, Deputy Director of the Geological Survey and Resource Assessment Division. Mary Hagerty asked everyone to introduce themselves and invited questions and comments as they had input into the meeting.

MINUTES OF THE SEPTEMBER 17, 2003 COUNCIL MEETING

Mary Hagerty asked if anyone had any comments regarding the September 17, 2003 council meeting minutes. John Boyer made a motion to accept the minutes as written of the September 17, 2003 meeting. Richard Frueh seconded the motion and it passed.

AGRICULTURAL EXEMPTIONS

Magee Dam – Pike County – Mr. Alexander began by giving a brief history of the dam and discussing the requirements of an agricultural exemption. He then summarized the agricultural exemption request the owner, Ms. Hettie Hall, had submitted. The application states that the dam will be used primarily for livestock watering. Mr. Alexander showed the council pictures of the livestock, which have direct access to the lake.

Mr. Alexander introduced Ms. Hettie Hall and gave her the opportunity to address the council or answer questions from the council. Ms. Hall commented that the lake has always been used to water their cattle. Ms. Hagerty stated that the letter submitted by the owner indicates that there is no boating on the lake. Ms. Hall replied that her brother was adamant about no boating on the lake. She said that they do own a small paddleboat that is sometimes used on the lake.

The council asked for a recommendation from the Chief Engineer concerning the exemption request.

Mr. Alexander replied that to his knowledge there were no safety reasons why a permit could not be renewed on this dam. However, since the lake is being used for agricultural purposes, an agricultural exemption would be appropriate.

Mr. Freeman made a motion that the council grant the agricultural exemption for the Magee Dam.

Mr. Cawlfeld seconded the motion and it passed.

Keyes Branch Dam – Washington County – Mr. Alexander began the discussion with a brief history of the dam. The dam is an old abandoned barite tailings dam that was built several years ago. Part of the tailings impoundment supports vegetation and there is also some water being impounded behind the embankment. He summarized the exemption request the owner had submitted. Mr. Alexander showed pictures of the pasture and of the pump that pumps water from the impoundment area to a small watering tank inside the pasture.

Mr. Alexander introduced Mr. & Mrs. Sobba, the owners of the dam, and gave them the opportunity to address the council or answer questions from the council.

Ms. Hagerty asked about the lots around the lake. Mr. Sobba replied that there would not be any lots sold with lake frontage. They had purchased 850 acres with 500 of those acres being developed. The area around the lake, which is approximately 150 acres, would be used primarily to keep cattle on and would not be a part of the development. No homes built will be built around the lake and there will be no fishing rights or direct access to the lake for anyone in the development.

Mr. Frueh asked how much of the 61 acres in the reservoir area was actually water. Mr. Alexander replied that he believed it held about 10 acres of water.

Ms. Hagerty asked if they were going to be selling lots on the tailings and was assured by the owner that they would not be selling lots on the tailings.

Mrs. Sobba told the council that they were developing the area directly off of the highway and the dam and lake sets approximately 1½ to 2 miles farther back.

Ms. Schoonover asked if it this would be a private subdivision and the owner responded, yes it was.

Ms. Hagerty asked what the staff recommendation was for this dam.

Mr. Alexander replied that the primary use of this dam had changed. The owner does have cattle that are using the lake for watering purposes. He warned the owner that if the agricultural exemption is issued and the dam is later sold, the new owners would have to re-apply for the agricultural exemption. The exemption does not carry over to a new owner.

After further discussion of the issues concerning the exemption, Mr. Cawlfeld made a motion to grant the agricultural exemption on this dam. Mr. Frueh seconded the motion and it passed.

STATUS OF PERMITS

The council was updated on the number of permits that the program has issued since the last meeting, the new dams that are currently under construction, and where the program stands with regard to bringing the total number of regulated dams into compliance.

COUNCIL ACTION & UPDATE

Lake Hanna Dam – MO30314 – Jim Alexander gave a brief history of the dam. He explained that the owners had performed work on the spillway without a construction permit and as a result of that work significantly reduced the spillway capacity. After the last meeting a letter was sent to the owner stating that the training berm needed to be completed by the first of the year. He concluded by saying that if the work is not completed by the first of the year, a notice of violation will be sent to the owner. This would allow the council to address this issue at the March 2004 meeting.

Oswald Lake Dam – MO11031 – Jim Alexander gave a brief history of the dam. He explained that the dam had been owned by an elderly lady who refused to allow us access to the property to do the inspections. Mrs. Oswald has since passed away and John Lucas has purchased the property.

Mr. Lucas recently notified our office that the dam had been breached. While we have received digital photos of the breach via email from the owner, a site visit has not been made to confirm the status of the dam.

COUNCIL NOTICE OF VIOLATION

Keuss Dam – MO40120 – Jim Alexander gave a brief history of the dam. He commented that the Keuss Dam was built without an approved construction permit. To date we have not received a construction permit application from the owner. He explained that the owner was previously issued a staff notice of violation giving the owner a deadline to apply for a permit but that has not been met. He recommended that the council consider issuing a Notice of Violation to the owner asking him to retain the services of a registered professional engineer to prepare a permit application that will bring the dam into compliance with the Dam Safety Law and have the application submitted for review by the WRD by March 1, 2004.

Ms. Hagerty asked what the owner had to say when he was contacted earlier in the year. Mr. Alexander replied that the owner stated he had contacted an engineering firm about preparing an application. However, nothing has been submitted to date.

Mr. Clay stated that he had talked with someone with an engineering firm but we still do not have a firm commitment from them as to when they will be submitting a construction or a safety permit application. The owner had not retained them; they were simply preparing a proposal for the work.

Mr. Alexander pointed out that despite the owner having known about this legal obligation for over a year, the owner is just now at the point of asking for a proposal to do the work from an engineer.

Mr. Cawlfeld asked if this was a barite dam. Mr. Alexander replied that the dam appears to be a conventional dam.

Mr. Boyer made a motion to follow staff recommendations and send the owner a Council Notice of Violation. Mr. Freeman seconded the motion and it passed.

FY-2004 BUDGET

Mimi Garstang, Director for the Geological Survey and Resource Assessment Division updated the council on the status of the budget for FY-04. She reported that the Governor has said that he does not anticipate any additional withholdings in General Revenue for the remainder of the current fiscal year. This should allow the program to operate as usual under the existing budget.

Ms. Garstang further commented that the General Assembly would not reconvene in Jefferson City until after the first of the year. However, there is already some activity occurring with the Budget Committee. She has already testified in front of the Budget Committee to discuss performance measures and how they relate to the fact that the program is no longer able to perform the permit renewal inspections on dams due to lack of funding for the program.

Ms. Garstang thanked Richard Frueh for attending the Budget Committee hearing and Mary Hagerty for submitting a letter on behalf of the Water Resources Program.

UPDATE ON DAM OWNER/ENGINEER WORKSHOPS

Mr. Alexander showed the council a presentation that he has presented to the general public regarding the changes in dam safety. The presentation was also given to Watershed Subcommittee group from the Natural Resource Conservation Service and several representatives from Watershed Districts around the state. The discussion revolved around the requirements for performing a permit renewal inspection.

The council's attention was directed to the Permit Renewal Checklist and a list of engineers that attended the workshops. Mr. Alexander stated that he wanted to discuss what is being required of the engineers when they are performing the renewal inspections.

Mr. Alexander commented that the requirements were based on the Section 236.440 of the Dam Safety Law. He then discussed each requirement. After this discussion he opened the floor up for any discussion about the permitting requirements.

Ms. Hagerty asked if Mr. Alexander had received an opinion as to whether the checklist was appropriate based on the regulations. Mr. Alexander told the council that Ms. Shannon Haney of the Attorney Generals Office had reviewed the checklist with respect to the law. Ms. Haney has determined we were justified in requiring that information.

Mr. Russell C. Adams, a private consultant, noted that these requirements are very similar to the requirements for the initial registration permit that all the dam owners went through some years ago. Mr. Adams stated that he felt the permitting requirements now are much more elaborate than what is described in the Rules and Regulations. Mr. Adams commented that he had performed several permit renewal inspections in accordance to the checklist that was prepared by Mr. Alexander and feels that it is quite burdensome on the dam owner. However, he reported that he has not had any dam owners say that they were not going to follow the checklist.

Mr. Alexander responded by directing the council's attention to the section of the dam safety law, which discusses permit renewals. The law states that the engineer performing the permit renewal inspection must submit a certification that the dam has been inspected in accordance with the dam safety law. Mr. Adams had also brought up the fact that the law says the Dam and Reservoir Safety Council may require the certification but it does not say the Water Resources Program can require it. There was a question as to whether this had been voted on by the council to require this information. Mr. Alexander reported that he had discussed this with Ms. Shannon Haney from the Attorney Generals Office.

Ms. Haney commented that her interpretation indicates it is at the discretion of the council to decide if a vote is necessary. She did recommend to Mr. Alexander that if they felt it would be best for the council to take a vote on whether the checklist was appropriate that would be acceptable. Ms. Hagerty stated that it would not be a bad idea for the record to vote on the checklist. Ms. Haney replied that since a question had been raised it would not be a bad idea.

Mr. Frueh made a motion that the council require certifications as part of the permit renewal application process. Mr. Cawlfeld seconded the motion and it passed.

Ms. Haney asked Mr. Adams if that answered his question.

Mr. Adams asked if WRP would be requiring all dam owners to supply a certification.

Ms. Haney stated that yes it would be required of all dam owners.

Mr. Adams asked if it was also going to be required of State Parks.

Mr. Alexander confirmed that it would also be required of State Parks.

Ms. Haney asked Mr. Adams if there were other issues that he wished to discuss at this time.

Mr. Adams responded by asking about the judgement of slope stability requirement in the checklist.

Ms. Hagerty commented that she believes that Mr. Adams thinks the requirements in the checklist goes above what the actual law requires. Ms. Hagerty stated that she did not believe any action was necessary on that subject because the checklist had been developed by the program and reviewed by the Attorney Generals Office.

Ms. Haney told Mr. Adams that if he would send her a letter explaining his concerns, she would review the letter and reply to him in writing about her position on the subject.

LEGISLATION

Mr. Alexander told the council that Representative Dan Ward has requested we prepare draft legislation that would address some of the issues that have occurred as a result of the budget cuts and develop a fee to fund the program. Mr. Alexander told the council that we had sent the draft legislation to Representative Ward but he did not like it.

Mr. Alexander discussed the changes to the law that was submitted. He explained that the definition of an agricultural dam was modified to insert the word primarily. The definition of the term "dam" was changed so that all dams 35 feet high would still be regulated as long as they have a storage volume of 50-Acre feet at the dam crest elevation. Language was also included to develop a fee to run the program. At this time, it is not clear whether any of these changes to the legislation will be pursued.

DATE AND LOCATION OF NEXT COUNCIL MEETING

The next meeting of the Dam and Reservoir Safety Council will be March 10, 2003 at 10:00 a.m. at the GSRAD Conference room in Rolla, Missouri.

OTHER BUSINESS

Mr. Alexander read a letter of resignation from the council written by Barbara Adelman effective after this meeting. Ms. Adelman is moving her residence to Illinois and will no longer be a Missouri resident. The council members commended Ms. Adelman for her work on the council over the years.

MEETING ADJOURNED

Barbara Adelman made a motion to adjourn the meeting. Mr. Cawlfeld seconded the motion and it passed.

Respectfully Submitted,

Tammy Theilen